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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,418	08/01/2001	Robert J. Lockwood	WUR 50840/US/2	6387

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Patent Counsel
Huntsman Polyurethanes
286 Mantua Grove Road
West Deptford, NJ 08066-1732

EXAMINER

COONEY, JOHN M

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 07/01/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/920,418

Applicant(s)

LOCKWOOD, ROBERT J.

Examiner

John m Cooney

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27-29 is/are allowed.
- 6) ☒ Claim(s) 1-26 and 30-32 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,4-9, 20-22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Gansen et al. (5,132,334).

Gansen discloses preparations of flexible polyurethane foams by blending isocyanate blends of MDI and TDI isocyanates, polyols with molecular weights as claimed, water as a blowing agent, catalyst, and other additives in a one shot manner capable of forming flexible foams having densities inclusive of those claimed (see the entire document):

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,3,10-19, 23, 25,26, and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gansen et al. as applied to claims 1 4-9 20-22 and 24 above, and further in view of itself and Heyman et al. (5,607,982) and Obata et al.(5,674,920).

Claims differ from Gansen et al. in that the amounts of MDI isomer and TDI isomer amounts are not directly in overlap. However, It has been held that in cases where a claimed range overlaps or lies within that of a range disclosed by the prior art that a prima facie case of obviousness exist. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990); *In re Geisler*, 116 F.3d 1465, 1469-71 43 USPQ2d 1362, 1365-66(Fed. Cir. 1997), and *M.P.E.P.* 2144.05 . Accordingly, it would have been obvious for one having ordinary skill in the art to have varied the amounts of isomers within the teachings of Gansen et al. for the purpose of modulating the isocyanate effect in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results. Applicants' results are not persuasive of patentability in a manner commensurate in scope with these claims.

Claims differ from Gansen et al. in that a continuous and/or free rise processes are not particularly recited. However, continuous and free rise processes are conventional and disclosed by Heyman et al. for the purpose of varying shapes and form of realized products (see column 5 line 33 – column 6 line 9). Accordingly, it would have been obvious for one having ordinary skill in the art to have employed continuous

and free rises process as taught by Heyman et al. in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Claims differ from Gansen et al. in that blowing agent beyond water are not explicitly disclosed. However, employment of additional blowing agents is well known for the purpose of enhancing and adding blowing effect as taught by Obata et al. (see column 8 lines 17-20). Accordingly, it would have been obvious for one having ordinary skill in the art to have utilized blowing blends as taught by Obata et al. in the preparations of Gansen et al. in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

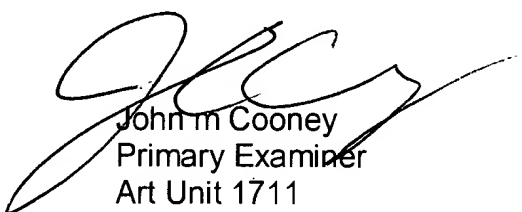
Claims differ from Gansen et al. in that isocyanate modification is not highlighted. However, Obata et al. recites such modifications to be well known structures in isocyanate mixtures (see column 5 lines 22-35). Accordingly, it would have been obvious for one having ordinary skill in the art to have utilized modified isocyanates as taught by Obata et al. in the preparations of Gansen et al. for the purpose of modifying polymeric structural effects in order to arrive at the products and/or processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Claims 27-29 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John m Cooney whose telephone number is 703-308-2433. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, james seidleck, can be reached on (703) 308-2462. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



John m Cooney
Primary Examiner
Art Unit 1711